

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 495**

5 (SENATORS PALUMBO AND PLYMALE, *original sponsors*)

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7 _____
8 [Passed March 11, 2011; in effect from passage.]
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11
12 AN ACT to repeal §3-4A-13a of the Code of West Virginia, 1931, as
13 amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4,
14 §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a,
15 §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all
16 relating generally to the use of electronic voting systems;
17 defining terms; setting forth the requirements of electronic
18 voting systems; requiring public meetings held on adopting
19 electronic voting be held at least six months prior to the
20 next election; providing that if an electronic voting system
21 is terminated, it must be replaced by an electronic voting
22 system that complies with federal law; deleting the
23 requirement that the purchase or lease of vote-recording
24 devices must be paid in cash; deleting outmoded terms and
25 voting systems no longer being used; updating technical
26 terminology; requiring at least two vote-recording devices be

1 provided at each precinct in a primary election; and providing
2 that independent voters may vote in primaries as otherwise
3 provided in code.

4 *Be it enacted by the Legislature of West Virginia:*

5 That §3-4A-13a of the Code of West Virginia, 1931, as amended,
6 be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9,
7 §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17,
8 §3-4A-19, §3-4A-20 and §3-4A-27 of said code be amended and
9 reenacted, all to read as follows:

10 **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

11 **§3-4A-2. Definitions.**

12 As used in this article, unless otherwise specified:

13 (1) "Automatic tabulating equipment" means all apparatus
14 necessary to electronically count votes recorded on ballots and
15 tabulate the results;

16 (2) "Ballot" means an electronic image or paper on which votes
17 may be recorded by means of perforating or marking with
18 electronically sensible ink or pencil or a screen upon which votes
19 may be recorded by means of a stylus or by means of touch;

20 (3) "Central counting center" means a facility equipped with
21 suitable and necessary automatic tabulating equipment, selected by
22 the county commission, for the electronic counting of votes
23 recorded on ballots;

24 (4) "Electronic poll book" means an electronic device
25 containing the same voter registration information maintained by
26 the county clerk in a printed poll book.

1 (5) "Electronic voting system" is a means of conducting an
2 election whereby votes are recorded on ballots by means of an
3 electronically sensible marking ink, by perforating or are recorded
4 on equipment that registers votes on a computer disk, or by
5 touching a screen with a stylus or by means of touch, and votes are
6 subsequently counted by automatic tabulating equipment at the
7 central counting center;

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10 (6) "Standard validation test deck" means a group of ballots
11 wherein all voting possibilities which can occur in an election are
12 represented; and

13 (7) "Vote-recording device" means equipment in which ballots
14 are placed to allow a voter to record his or her vote by
15 electronically sensible ink, or pencil, or a screen upon which
16 votes may be recorded by means of a stylus or by means of touch.

17 **§3-4A-3. Procedure for adopting electronic voting systems.**

18 An electronic voting system that has been approved in
19 accordance with section eight of this article may be adopted for
20 use in general, primary and special elections in any county by the
21 following procedure and not otherwise:

22 By a majority of the members of the county commission voting
23 to adopt the same at a public meeting regularly called for that
24 purpose: *Provided*, That the meeting be held not less than six
25 months prior to the next scheduled primary or general election,
26 with notice published as a Class II-0 legal advertisement in

1 compliance with the provisions of article three, chapter fifty-nine
2 of this code. The publication area for such publication shall be
3 the county involved.

4 **§3-4A-4. Procedure for terminating use of electronic voting**
5 **systems.**

6 The use of an electronic voting system may be terminated:

7 (1) By a majority of the members of the county commission
8 voting to terminate use of the system and replace it with a
9 different voting system meeting the requirements of the Help
10 America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special
11 public meeting called for the purpose of said termination, with due
12 notice thereof published as a Class II-0 legal advertisement in
13 compliance with the provisions of article three, chapter fifty-nine
14 of this code, and the publication area for such publication shall
15 be the county involved: *Provided*, That such meeting shall be held
16 not less than six months prior to a general election or six months
17 prior to a primary election. If at such meeting, such county
18 commission shall enter an order of its intention to terminate use
19 of an electronic voting system, it shall thereafter forthwith cause
20 to be published a certified copy of such order as a Class II-0
21 legal advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code, and the publication area
23 for such publication shall be the county involved. The first
24 publication of such order shall not be less than twenty days after
25 the entry of such order. Such county commission shall not

1 terminate the use of an electronic voting system until ninety days
2 after the entry of such order of its intention to terminate the
3 same. Promptly after the expiration of ninety days after the entry
4 of such order of intention to terminate the use of an electronic
5 voting system, if no petition has theretofore been filed with such
6 county commission requesting a referendum on the question of
7 termination of the electronic voting system as hereinafter
8 provided, such county commission shall enter a final order
9 terminating the use of the electronic voting system, and the use of
10 electronic voting system shall thereby be terminated. If a
11 petition has been submitted as provided in this subdivision, the
12 county commission shall not terminate the use of the system but
13 shall proceed as provided in this subdivision.

14 If five percent or more of the registered voters of such
15 county shall sign a petition requesting that the use of an
16 electronic voting system be terminated in such county and such
17 petition be filed with the county commission of such county within
18 ninety days after the entry of such order of intention to terminate
19 the use of an electronic voting system, such county commission
20 shall submit to the voters of such county at the next general or
21 primary election, whichever shall first occur, the question: "Shall
22 the use of an electronic voting system be terminated in
23 County?" If this question be answered in the
24 affirmative by a majority of the voters in such election upon the
25 question, the use of an electronic voting system shall thereby be
26 terminated. If such question shall not be answered in the

1 affirmative by such majority, the use of an electronic voting
2 system shall continue.

3 (2) By the affirmative vote of a majority of the voters of
4 such county voting upon the question of termination of the use of
5 an electronic voting system in such county. If five percent or
6 more of the registered voters of such county shall sign a petition
7 requesting the termination of the use of an electronic voting
8 system in such county, and such petition be filed with the county
9 commission of such county, such county commission shall submit to
10 the voters of such county at the next general or primary election,
11 following by not less than ninety days the date of the filing of
12 such petition, the question: "Shall the use of an electronic voting
13 system be terminated in County?" If this question
14 be answered in the affirmative by a majority of the voters of such
15 county voting upon the question, the use of an electronic voting
16 system shall thereby be terminated. If such question shall not be
17 answered in the affirmative by a majority of the voters of such
18 county voting upon the question, the use of an electronic voting
19 system shall thereby continue.

20 **§3-4A-6. Acquisition of vote recording devices by purchase or**
21 **lease; acquisition of use of automatic tabulating equipment;**
22 **counting centers.**

23 (a) A county commission may acquire vote recording devices by
24 any one or any combination of the following methods:

25 (1) By purchasing the same and paying the purchase price from

1 funds available from the maximum general levy or from any other
2 lawful source; and

3 (2) By leasing the same under written contract of lease and
4 paying the rentals from funds available from the maximum general
5 levy or any other lawful source.

6 (b) A county commission may acquire the use of automatic
7 tabulating equipment by leasing or renting the same under written
8 contract of lease or rental and paying the rentals therefor from
9 funds available from the maximum general levy or other lawful
10 source.

11 (c) A county commission may enter into an agreement with
12 another county commission to share automatic tabulating equipment
13 if the automatic tabulating equipment may be transported to the
14 appropriate central counting centers. No ballots may be
15 transported for counting in any county other than the county in
16 which the votes were cast.

17 (d) A county commission is authorized to accept as a gift the
18 use of suitable automatic tabulating equipment.

19 (e) The county commission may also secure a counting center.

20 **§3-4A-9. Minimum requirements of electronic voting systems.**

21 An electronic voting system of particular make and design may
22 not be approved by the State Election Commission or be purchased,
23 leased or used by any county commission unless it meets the
24 following requirements:

25 (1) It secures or ensures the voter absolute secrecy in the
26 act of voting or, at the voter's election, provides for open

1 voting;

2 (2) It is constructed to ensure that, except in instances of
3 open voting as provided in this section, the contents of a marked
4 ballot may not be seen or known by anyone other than the voter who
5 has voted or is voting;

6 (3) It permits each voter to vote at any election for all
7 persons and offices for whom and which he or she is lawfully
8 entitled to vote, whether or not the name of any person appears on
9 a ballot as a candidate; and it permits each voter to vote for as
10 many persons for an office as he or she is lawfully entitled to
11 vote for; and to vote for or against any question upon which he or
12 she is lawfully entitled to vote. The automatic tabulating
13 equipment used in electronic voting systems is to reject choices
14 recorded on any ballot if the number of choices exceeds the number
15 to which a voter is entitled;

16 (4) It permits each voter to write in the names of persons for
17 whom he or she desires to vote whose names do not appear upon the
18 ballots;

19 (5) It permits each voter to change his or her vote for any
20 candidate and upon any question appearing upon the ballots or
21 ballot labels up to the time when his or her ballot is deposited in
22 the ballot box or his or her ballot is cast by electronic means;

23 (6) It contains programming media containing sequentially
24 numbered program instructions and coded or otherwise protected from
25 tampering or substitution of the media or program instructions by
26 unauthorized persons and capable of tabulating all votes cast in

1 each election;

2 (7) It contains two standard validation test decks approved as
3 to form and testing capabilities by the State Election Commission;

4 (8) It correctly records and counts accurately all votes cast
5 for each candidate and for and against each question appearing upon
6 the ballots;

7 (9) It permits each voter at any election, other than a
8 primary election, to vote a straight party ticket, as provided in
9 section five, article six of this chapter, by one mark or punch;

10 (10) It permits a voter in a primary election to: (A) vote
11 only for the candidates of the party for which the voter is legally
12 permitted to vote; (B) vote for the candidates, if any, for
13 nonpartisan nominations or election; and (C) vote on public
14 questions; and precludes the voter from voting for any candidate
15 seeking nomination by any other political party unless that
16 political party has determined that the voter may participate in
17 its primary election;

18 (11) It, where applicable, is provided with means for sealing
19 or electronically securing the vote recording device to prevent its
20 use and to prevent tampering with the device, both before the polls
21 are open or before the operation of the vote recording device for
22 an election is begun and immediately after the polls are closed or
23 after the operation of the vote recording device for an election is
24 completed;

25 (12) It has the capacity to contain the names of candidates
26 constituting the tickets of at least nine political parties and

1 accommodates the wording of at least fifteen questions;

2 (13) (A) Direct recording electronic voting machines must
3 generate a paper copy of each voter's vote that will be
4 automatically kept within a storage container, that is locked,
5 closely attached to the direct recording electronic voting machine,
6 and inaccessible to all but authorized voting officials, who will
7 handle such storage containers and such paper copies contained
8 therein in accordance with section nineteen of this article.

9 (B) The paper copy of the voter's vote shall be generated at
10 the time the voter is at the voting station using the direct
11 recording electronic voting machine.

12 (C) The voter may examine the paper copy visually or through
13 headphone readout, and may accept or reject the printed copy.

14 (D) The voter may not touch, handle or manipulate the printed
15 copy manually in any way.

16 (E) Once the printed copy of the voter's votes is accepted by
17 the voter as correctly reflecting the voter's intent, but not
18 before, it will automatically be stored for recounts or random
19 checks and the electronic vote will be cast within the computer
20 mechanism of the direct recording electronic voting machine.

21 (F) Direct recording electronic voting machines with a
22 mandatory paper copy shall be approved by the Secretary of State.
23 The Secretary of State may promulgate rules and emergency rules to
24 implement or enforce this subsection pursuant to the provisions of
25 section five, article three, chapter twenty-nine-a of this code.

26 (14) Where vote recording devices are used, they shall:

1 (A) Be durably constructed of material of good quality and in
2 a workmanlike manner and in a form which makes it safely
3 transportable;

4 (B) Bear a number that will identify it or distinguish it from
5 any other machine;

6 (C) Be constructed to ensure that a voter may easily learn the
7 method of operating it and may expeditiously cast his or her vote
8 for all candidates of his or her choice and upon any public
9 question;

10 (D) Be accompanied by a mechanically or electronically
11 operated instruction model which shows the arrangement of the
12 ballot, party columns or rows, and questions;

13 (15) For electronic voting systems that utilize a screen upon
14 which votes may be recorded by means of a stylus or by means of
15 touch:

16 (A) Be constructed to provide for the direct electronic
17 recording and tabulating of votes cast in a system specifically
18 designed and engineered for the election application;

19 (B) Be constructed to prevent any voter from voting for more
20 than the allowable number of candidates for any office, to include
21 an audible or visual signal, or both, warning any voter who
22 attempts to vote for more than the allowable number of candidates
23 for any office or who attempts to cast his or her ballot prior to
24 its completion and are constructed to include a visual or audible
25 confirmation, or both, to the voter upon completion and casting of
26 the ballot;

1 (C) Be constructed to present the entire ballot to the voter,
2 in a series of sequential pages, and to ensure that the voter sees
3 all of the ballot options on all pages before completing his or her
4 vote and to allow the voter to review and change all ballot choices
5 prior to completing and casting his or her ballot;

6 (D) Be constructed to allow election commissioners to spoil a
7 ballot where a voter fails to properly cast his or her ballot, has
8 departed the polling place and cannot be recalled by a poll clerk
9 to complete his or her ballot;

10 (E) Be constructed to allow election commissioners, poll
11 clerks, or both, to designate, mark or otherwise record provisional
12 ballots;

13 (F) Consist of devices which are independent, nonnetworked
14 voting systems in which each vote is recorded and retained within
15 each device's internal nonvolatile electronic memory and contain an
16 internal security, the absence of which prevents substitution of
17 any other device;

18 (G) Store each vote in no fewer than three separate,
19 independent, nonvolatile electronic memory components and that each
20 device contains comprehensive diagnostics to ensure that failures
21 do not go undetected;

22 (H) Contain a unique, embedded internal serial number for
23 auditing purposes for each device used to activate, retain and
24 record votes;

25 (I) Be constructed to record all preelection, election and
26 post-election activities, including all ballot images and system

1 anomalies, in each device's internal electronic memory and are to
2 be accessible in electronic or printed form;

3 (J) Be constructed with a battery backup system in each device
4 to, at a minimum, prevent the loss of any votes, as well as all
5 preelection, election and post-election activities, including all
6 ballot images and system anomalies, stored in the device's internal
7 electronic memory and to allow voting to continue for two hours of
8 uninterrupted operation in case of an electrical power failure; and

9 (K) Be constructed to prevent the loss of any votes, as well
10 as all preelection, election and post-election activities,
11 including all ballot images and system anomalies, stored in each
12 device's internal electronic memory even in case of an electrical
13 and battery power failure.

14 **§3-4A-9a. Authorization for ballot-marking voting systems; minimum**
15 **requirements.**

16 (a) For purposes of this section, "ballot-marking accessible
17 voting system" means a device which allows voters, including voters
18 with disabilities, to mark an optical scanning or mark-sensing
19 voting system ballot, privately and independently. The
20 ballot-marking device is capable of marking voter selections on an
21 optically readable or mark-sensing ballot which shall be
22 subsequently read and tallied on state certified optically readable
23 or mark-sensing ballot tabulating and reporting systems. Counties
24 are hereby permitted to obtain and employ ballot-marking accessible
25 voting systems that are approved by the State Election Commission.

26 (b) The ballot-marking accessible voting device shall be a

1 completely integrated ballot-marking device that is designed to
2 allow voters to either view ballot choices through a high
3 resolution visual display or listen to ballot choices with
4 headphones and then enter ballot selections directly through
5 specially designed, integrated accessibility devices.

6 (c) Ballot-marking accessible voting systems may be used for
7 the purpose of marking or scanning optically readable or
8 mark-sensing ballots cast in all general, special and primary
9 elections and shall meet the following specific requirements:

10 (1) The ballot-marking accessible voting system, system
11 firmware and programming software must be certified by an
12 independent testing authority, according to current federal voting
13 system standards and be approved by the State Election Commission
14 prior to entering into any contract.

15 (2) The ballot-marking accessible voting system shall,
16 additionally:

17 (A) Alert the voter if the voter has made more ballot
18 selections than the law allows for an individual office or ballot
19 issue;

20 (B) Alert the voter if the voter has made fewer ballot
21 selections than the law allows for an individual office or ballot
22 issue;

23 (C) Allow the voter to independently review all ballot choices
24 and make any corrections, before the ballot is marked;

25 (D) Provide the voter with the opportunity to make a write-in
26 ballot choice, where allowed by state law;

1 (E) Allow voters with disabilities to mark their ballots, in
2 complete independence, and in conformity with both federal and
3 state law concerning mandatory accessibility for disabled persons;

4 (F) Allow blind or visually impaired voters to vote in
5 complete privacy;

6 (G) Provide voters with an opportunity to change ballot
7 selections, or correct errors, before the ballot is marked for
8 voting, including the opportunity to correct the error through the
9 issuance of a replacement ballot if the voter was otherwise unable
10 to change the ballot or correct the error;

11 (H) Provide voters with the ability to view all ballot
12 selections through a high resolution visual display or to have all
13 ballot selections read to the voter through headphones;

14 (I) Ensure complete ballot privacy, while employing the
15 ballot-marking audio system and providing the voter with the option
16 to turn off the visual ballot display;

17 (J) Include a completely integrated voter input keypad, using
18 commonly accepted voter accessibility keys with Braille markings;

19 (K) Include the ability for a voter to employ a sip/puff
20 device to enter ballot choices;

21 (L) Allow the voter to magnify all ballot choices and to
22 adjust both the volume of the audio feature and the speed of ballot
23 presentation;

24 (M) Allow the voter to employ his or her own headset as well
25 as the headset provided with the ballot-marking device while being
26 equipped with multiple output connections to accommodate different

1 headsets;

2 (N) Have multiple-language capability; and

3 (O) Allow the voter to verify that:

4 (i) An optical scan ballot inserted into the device at the
5 start of voting is blank; and

6 (ii) The voted optical scan ballot that is produced by the
7 device is voted as the voter intended.

8 (d) The Secretary of State is hereby directed to propose rules
9 and emergency rules for legislative approval in accordance with the
10 provisions of article three, chapter twenty-nine-a of this code
11 designed to ensure that any system employed by a county under the
12 provisions of this section is publicly tested prior to use in
13 election.

14 **§3-4A-9b. Authorization for precinct ballot-scanning device;**
15 **minimum requirements.**

16 (a) For purposes of this section, "precinct ballot-scanning
17 device" means a device used by the voter at the precinct on
18 election day or during early voting for the purpose of scanning the
19 voter's ballot after the ballot has been voted but prior to
20 depositing the ballot into the ballot box.

21 (b) The precinct ballot-scanning device may be used for the
22 purpose of scanning optically readable ballots cast in all primary,
23 general and special elections.

24 (c) The precinct ballot-scanning device, firmware and
25 programming software must be certified by an independent testing
26 authority, according to current federal standards and be approved

1 by the State Election Commission. No election official may enter
2 into any contract to purchase, rent, lease or otherwise acquire any
3 precinct ballot-scanning device, firmware or software not approved
4 by the State Election Commission.

5 (d) The precinct ballot-scanning device shall additionally:

6 (1) Alert the voter if the voter has made more ballot
7 selections than the law allows for an individual office or ballot
8 issue;

9 (2) Alert the voter if the voter has made fewer ballot
10 selections than the law allows for an individual office or ballot
11 issue; and

12 (3) Allow voters an opportunity to change ballot selections,
13 or correct errors, including the opportunity to correct the error
14 through the issuance of a replacement ballot if the voter was
15 otherwise unable to change the ballot or correct the error.

16 (e) The precinct ballot-scanning device may be used for
17 tabulating election results only under the following conditions:

18 (1) The county has at least one precinct ballot-scanning
19 device in each precinct;

20 (2) No tabulation of results is done at the precinct;

21 (3) The "tabulation memory device" may be removed from the
22 ballot-scanning device only after the polls close and the votes may
23 only be counted at the central counting center on the night of the
24 election; and

25 (4) All voters at the precinct are required to use the ballot
26 scanning device as a condition of completing their vote.

1 (f) If the optical scan ballots from each of the precincts are
2 counted at the central counting center on election night in
3 accordance with section twenty-seven of this article, and the
4 results from that count are the results finally published on
5 election night, then any county meeting each of the requirements in
6 paragraphs (1) through (4) of subsection (e), may turn off the over
7 vote switch on the central counting device since every ballot will
8 have been evaluated for over votes by the precinct scanning device.

9 (g) The Secretary of State is hereby directed to propose rules
10 and emergency rules for legislative approval in accordance with the
11 provisions of article three, chapter twenty-nine-a of this code in
12 accordance with the provisions of this section.

13 **§3-4A-10. County clerk to be custodian of vote-recording devices,**
14 **tabulating equipment and electronic poll books; duties.**

15 (a) When an electronic voting system is acquired by any county
16 commission, the vote-recording devices, where applicable, and the
17 tabulating equipment shall be immediately placed in the custody of
18 the county clerk and shall remain in his or her custody at all
19 times except when in use at an election or when in custody of a
20 court or court officers during contest proceedings. The clerk
21 shall see that the vote-recording devices and the tabulating
22 equipment are properly protected and preserved from damage or
23 unnecessary deterioration and shall not permit any unauthorized
24 person to tamper with them. The clerk shall also keep the
25 vote-recording devices and tabulating equipment in repair and
26 prepare the same for voting.

1 (b) When a county commission elects to acquire and use
2 electronic poll books in lieu of printed poll books, the clerk of
3 the county commission shall immediately take custody of the
4 electronic poll books, which shall remain in his or her custody at
5 all times except when in use at an election or when in the custody
6 of a court or court officers during contest proceedings. The clerk
7 shall ensure that the electronic poll books are properly protected
8 and preserved from damage or unnecessary deteriorations and the
9 clerk shall not permit any unauthorized person to tamper with the
10 electronic poll books. The clerk shall also keep the electronic
11 poll books in good repair and the clerk shall prepare the
12 electronic poll books for election day.

13 **§3-4A-10a. Proportional distribution of vote-recording devices.**

14 Where vote-recording devices are used, the county commission
15 of each county shall, upon the close of registration, review the
16 total number of active registered voters and the number of
17 registered voters of each party in each precinct. Prior to each
18 election, the commission shall determine the number of voting
19 devices needed to accommodate voters without long delays and shall
20 assign an appropriate number to each precinct. For the purposes of
21 the primary election, the commission shall assign the number of
22 vote recording devices in each precinct to be prepared for each
23 party based as nearly as practicable on the proportion of
24 registered voters of each party to the total: *Provided*, That a
25 minimum of two vote-recording devices be provided.

26 **§3-4A-13. Inspection of ballots, electronic poll books and**

1 **vote-recording devices; duties of county commission, ballot**
2 **commissioners and election commissioners; records relating to**
3 **ballots and vote-recording devices; receipt of election**
4 **materials by ballot commissioners.**

5 (a) When the clerk of the county commission has completed the
6 preparation of the ballots and of any electronic poll books and
7 vote-recording devices as provided in sections eleven-a and
8 twelve-a of this article and as provided in section twenty-one,
9 article one of this chapter, and not later than seven days before
10 the day of the election, he or she shall notify the members of the
11 county commission and the ballot commissioners that the ballots and
12 any electronic poll books and devices are ready for use.

13 (b) The members of the county commission and the ballot
14 commissioners shall convene at the office of the clerk or at such
15 other place at which any vote-recording devices or electronic poll
16 books and the ballots are stored, not later than five days before
17 the day of the election, and shall inspect the devices, electronic
18 poll books and the ballots to determine whether the requirements of
19 this article have been met. Notice of the place and time of the
20 inspection shall be published, no less than three days in advance,
21 as a Class I-0 legal advertisement in compliance with the
22 provisions of article three, chapter fifty-nine of this code. The
23 publication area is the county involved.

24 (c) Any candidate and one representative of each political
25 party on the ballot may be present during the examination. If the

1 devices and electronic poll books and ballots are found to be in
2 proper order, the members of the county commission and the ballot
3 commissioners shall endorse their approval in the book in which the
4 clerk entered the numbers of the devices opposite the numbers of
5 the precincts.

6 (d) The vote-recording devices, the electronic poll books and
7 the ballots shall then be secured in double lock rooms. The clerk
8 and the president or president pro tempore of the county commission
9 shall each have a key. The rooms shall be unlocked only in their
10 presence and only for the removal of the devices, electronic poll
11 books and the ballots for transportation to the polls. Upon
12 removal of the devices, the electronic poll books and the ballots,
13 the clerk and president or president pro tempore of the county
14 commission shall certify in writing signed by them that the
15 devices, the electronic poll books and packages of ballots were
16 found to be sealed when removed for transportation to the polls.

17 (e) Vote-recording devices used during the early voting period
18 may be used on election day if retested in accordance with all the
19 provisions of this section, including public notice between the
20 close of early voting and prior to precinct placement for election
21 day. Vote-recording devices must comply with the applicable
22 requirements of section twenty-six of this article.

23 (f) Not later than one day before the election, the election
24 commissioner of each precinct previously designated by the ballot
25 commissioners shall attend at the office of the clerk of the county
26 commission to receive the necessary election records, books and

1 supplies required by law. The election commissioners shall receive
2 the per diem mileage rate prescribed by law for this service. The
3 election commissioners shall give the ballot commissioners a
4 sequentially numbered written receipt, on a printed form, provided
5 by the clerk of the county commission, for such records, books and
6 supplies. The receipt shall be prepared in duplicate. One copy of
7 the receipt shall remain with the clerk of the county commission
8 and one copy shall be delivered to the president or president pro
9 tempore of the county commission.

10 **§3-4A-17. Check of vote-recording devices and electronic poll**
11 **books before use; corrections; reserve vote-recording devices.**

12 (a) Any reserve vote-recording device used is to be prepared
13 for use by the clerk or his or her duly appointed deputy and the
14 reserve vote-recording device is to be prepared, inspected and
15 sealed and delivered to the polling place wherein the seal is to be
16 broken and the device opened in the presence of the precinct
17 election commissioners who shall certify in writing signed by them
18 to the clerk of the county commission, that the reserve
19 vote-recording device was found to be sealed upon delivery to the
20 polling place, that the seal was broken and the device opened in
21 their presence at the polling place.

22 (b) In counties using electronic poll books, the election
23 commissioners shall examine the electronic poll books to ascertain
24 whether the poll books are in working order before allowing any
25 voters to enter the polling location. If the electronic poll books
26 are not in working order, the election commissioners shall contact

1 the county clerk who shall immediately authorize a printed poll
2 book to serve in place of the electronic poll book for that
3 election. A printed poll book may accompany the electronic poll
4 book to each precinct.

5 **§3-4A-19. Conducting electronic voting system elections generally;**
6 **duties of election officers; penalties.**

7 (a) The election officers shall constantly and diligently
8 maintain a watch in order to see that no person votes more than
9 once and to prevent any voter from occupying the voting booth for
10 more than five minutes.

11 (b) In primary elections, before a voter is permitted to
12 occupy the voting booth, the election commissioner representing the
13 party to which the voter belongs shall direct the voter to the
14 vote-recording device or supply the voter with a ballot, as may be
15 appropriate, which will allow the voter to vote only for the
16 candidates who are seeking nomination on the ticket of the party
17 with which the voter is affiliated or for unaffiliated voters in
18 accordance with section thirty-one, article two of this chapter.

19 (c) The poll clerk shall issue to each voter when he or she
20 signs the poll book a printed card or ticket numbered to correspond
21 to the number on the poll book of the voter and in the case of a
22 primary election, indicating the party affiliation of the voter,
23 which numbered card or ticket is to be presented to the election
24 commissioner in charge of the voting booth.

25 (d) One hour before the opening of the polls the precinct
26 election commissioners shall arrive at the polling place and set up

1 the voting booths in clear view of the election commissioners.
2 Where applicable, they shall open the vote-recording devices, place
3 them in the voting booths, examine them to see that they have the
4 correct ballots by comparing them with the sample ballots, and
5 determine whether they are in proper working order. They shall
6 open and check the ballots, the electronic poll books, if
7 applicable, supplies, records and forms and post the sample ballots
8 and instructions to voters. Upon ascertaining that all ballots,
9 supplies, electronic poll books, if applicable, records and forms
10 arrived intact, the election commissioners shall certify their
11 findings in writing upon forms provided and collected by the clerk
12 of the county commission over their signatures to the clerk of the
13 county commission. Any discrepancies are to be noted and reported
14 immediately to the clerk of the county commission. The election
15 commissioners shall then number in sequential order the ballot stub
16 of each ballot in their possession and report in writing to the
17 clerk of the county commission the number of ballots received.
18 They shall issue the ballots in sequential order to each voter.

19 (e) Upon entering a precinct which is using an electronic poll
20 book, each voter shall be verified by use of the electronic poll
21 book to be a registered voter. If the voter is not registered
22 according to the electronic poll book within that precinct, the
23 poll clerk is to inform the voter of the proper precinct in which
24 the voter is registered.

25 (f) Where applicable, each voter shall be instructed how to
26 operate the vote-recording device before he or she enters the

1 voting booth.

2 (g) Where applicable, any voter who spoils, defaces or
3 mutilates the ballot delivered to him or her, on returning the
4 ballot to the poll clerks, shall receive another in its place.
5 Every person who does not vote any ballot delivered to him or her
6 shall, before leaving the election room, return the ballot to the
7 poll clerks. When a spoiled or defaced ballot is returned, the
8 poll clerks shall make a minute of the fact on the poll books, at
9 the time, write the word "spoiled" across the face of the ballot
10 and place it in an envelope for spoiled ballots.

11 Immediately on closing the polls, the election commissioners
12 shall ascertain the number of spoiled ballots during the election
13 and the number of ballots remaining not voted. The election
14 commissioners shall also ascertain from the poll books the number
15 of persons who voted and shall report, in writing signed by them to
16 the clerk of the county commission, any irregularities in the
17 ballot boxes, the number of ballots cast, the number of ballots
18 spoiled during the election and the number of ballots unused. All
19 unused ballots are to be returned at the same time to the clerk of
20 the county commission who shall count them and record the number.
21 All unused ballots shall be stored with the other election
22 materials and destroyed at the expiration of twenty-two months.

23 (h) Each commissioner who is a member of an election board
24 which fails to account for every ballot delivered to it is guilty
25 of a misdemeanor and, upon conviction thereof, shall be fined not
26 more than \$1,000 or confined in jail for not more than one year, or

1 both.

2 (i) The board of ballot commissioners of each county, or the
3 chair of the board, shall preserve the ballots that are left over
4 in their hands, after supplying the precincts as provided, until
5 the close of the polls on the day of election and shall deliver
6 them to the clerk of the county commission who shall store them
7 with the other election materials and destroy them at the
8 expiration of twenty-two months.

9 (j) Where ballots are used, the voter, after he or she has
10 marked his or her ballot, shall, before leaving the voting booth,
11 place the ballot inside the envelope or sleeve provided for this
12 purpose, with the stub extending outside the envelope, and return
13 it to an election commissioner who shall remove the stub and
14 deposit the envelope, if applicable, with the ballot inside in the
15 ballot box. No ballot from which the stub has been detached may be
16 accepted by the officer in charge of the ballot box, but the ballot
17 shall be marked "spoiled" and placed with the spoiled ballots. If
18 an electronic voting system is used that utilizes a screen on which
19 votes may be recorded by means of a stylus or by means of touch and
20 the signal warning that a voter has attempted to cast his or her
21 ballot has failed to do so properly has been activated and the
22 voter has departed the polling place and cannot be recalled by a
23 poll clerk to complete his or her ballot while the voter remains
24 physically present in the polling place, then two election
25 commissioners of different registered party affiliations, two poll
26 clerks of different registered party affiliations or an election

1 commissioner and a poll clerk of different registered party
2 affiliations shall spoil the ballot.

3 (k) The precinct election commissioners shall prepare a report
4 in quadruplicate of the number of voters who have voted and, where
5 electronic voting systems are used that utilize a screen on which
6 votes may be recorded by means of a stylus or by means of touch,
7 the number of ballots that were spoiled, as indicated by the poll
8 books, and shall place two copies of this report in the ballot box
9 or where electronic voting systems are used that utilize a screen
10 upon which votes may be recorded by means of a stylus or by means
11 of touch, shall place two copies of this report and the electronic
12 ballot devices in a container provided by the clerk of the county
13 commission, which thereupon is to be sealed with a paper seal
14 signed by the election commissioners to ensure that no additional
15 ballots may be deposited or removed from the ballot box. Two
16 election commissioners of different registered party affiliations
17 or two special messengers of different registered party
18 affiliations appointed by the clerk of the county commission, shall
19 forthwith deliver the ballot box or container to the clerk of the
20 county commission at the central counting center and receive a
21 signed numbered receipt therefor. The receipt must carefully set
22 forth in detail any and all irregularities pertaining to the ballot
23 boxes or containers and noted by the precinct election officers.

24 The receipt is to be prepared in duplicate, a copy of which
25 remains with the clerk of the county commission who shall have any
26 and all irregularities noted. The time of their departure from the

1 polling place is to be noted on the two remaining copies of the
2 report, which are to be immediately mailed to the clerk of the
3 county commission.

4 (1) The poll books, register of voters, unused ballots,
5 spoiled ballots and other records and supplies are to be delivered
6 to the clerk of the county commission, all in conformity with the
7 provisions of this section.

8 **§3-4A-20. Non-affiliated voters in primary elections.**

9 Unless a voter, not affiliated with a party, is permitted to
10 participate in the primary election of a political party, the
11 following provisions apply to voters, not affiliated with a party,
12 in primary elections that include non-partisan candidates or public
13 questions:

14 (1) Election officers shall provide a vote recording device,
15 where applicable, or the appropriate ballot to be marked by an
16 electronically sensible pen or ink, or by means of a stylus or by
17 means of touch or by other electronic means, so that voters not
18 affiliated with a party may vote only those portions of the ballot
19 relating to the nonpartisan candidates and the public questions
20 submitted, or shall provide a ballot containing only provisions for
21 voting for those candidates and upon those issues submitted common
22 to the ballots provided to all voters regardless of political party
23 affiliation, or both.

24 (2) In counties utilizing electronic voting systems in which
25 votes are recorded by perforating, if vote recording devices are
26 not available for the voters not affiliated with a party,

1 provisions are to be made for sealing the partisan section or
2 sections of the ballot or ballot labels on a vote recording device
3 using temporary seals, thus permitting the voter not affiliated
4 with a party to vote for the nonpartisan section or sections of the
5 ballot or ballot labels.

6 (3) After a voter not affiliated with a party has voted,
7 temporary seals may be removed and the device may then be used by
8 partisan voters.

9 **§3-4A-27. Proceedings at the central counting center.**

10 (a) All proceedings at the central counting center are to be
11 under the supervision of the clerk of the county commission and are
12 to be conducted under circumstances which allow observation from a
13 designated area by all persons entitled to be present. The
14 proceedings shall take place in a room of sufficient size and
15 satisfactory arrangement to permit observation. Those persons
16 entitled to be present include all candidates whose names appear on
17 the ballots being counted or if a candidate is absent, a
18 representative of the candidate who presents a written
19 authorization signed by the candidate for the purpose and two
20 representatives of each political party on the ballot who are
21 chosen by the county executive committee chairperson. A reasonable
22 number of the general public is also freely admitted to the room.
23 In the event all members of the general public desiring admission
24 to the room cannot be admitted at one time, the county commission
25 shall provide for a periodic and convenient rotation of admission
26 to the room for observation, to the end that each member of the

1 general public desiring admission, during the proceedings at the
2 central counting center, is to be granted admission for reasonable
3 periods of time for observation: *Provided*, That no person except
4 those authorized for the purpose may touch any ballot or ballot
5 card or other official records and papers utilized in the election
6 during observation.

7 (b) All persons who are engaged in processing and counting the
8 ballots are to work in teams consisting of two persons of opposite
9 political parties, and are to be deputized in writing and take an
10 oath that they will faithfully perform their assigned duties.
11 These deputies are to be issued an official badge or identification
12 card which is assigned an identity control number and the deputies
13 are to prominently wear on his or her outer garments the issued
14 badge or identification card. Upon completion of the deputies'
15 duties, the badges or identification cards are to be returned to
16 the county clerk.

17 (c) Ballots are to be handled and tabulated and the write-in
18 votes tallied according to procedures established by the Secretary
19 of State, subject to the following requirements:

20 (1) In systems using ballots marked with electronically
21 sensible ink, ballots are to be removed from the boxes and stacked
22 for the tabulator which separates ballots containing marks for a
23 write-in position. Immediately after tabulation, the valid
24 write-in votes are to be tallied. No write-in vote may be counted
25 for an office unless the voter has entered the name of an official
26 write-in candidate for that office on the line provided, either by

1 writing, affixing a sticker or placing an ink-stamped impression
2 thereon;

3 (2) In systems using ballots in which votes are recorded upon
4 screens with a stylus or by means of touch, the personalized
5 electronic ballots are to be removed from the containers and
6 stacked for the tabulator. Systems using ballots in which votes
7 are recorded upon screens with a stylus or by means of touch are to
8 tally write-in ballots simultaneously with the other ballots;

9 (3) When more than one person is to be elected to an office
10 and the voter desires to cast write-in votes for more than one
11 official write-in candidate for that office, a single punch or
12 mark, as appropriate for the voting system, in the write-in
13 location for that office is sufficient for all write-in choices.
14 When there are multiple write-in votes for the same office and the
15 combination of choices for candidates on the ballot and write-in
16 choices for the same office exceed the number of candidates to be
17 elected, the ballot is to be duplicated or hand counted, with all
18 votes for that office rejected;

19 (4) Write-in votes for nomination for any office and write-in
20 votes for any person other than an official write-in candidate are
21 to be disregarded;

22 (5) When a voter casts a straight ticket vote and also marks
23 the location for a write-in vote for an office, the straight ticket
24 vote for that office is to be rejected, whether or not a vote can
25 be counted for a write-in candidate; and

26 (6) Official write-in candidates are those who have filed a

1 write-in candidate's certificate of announcement and have been
2 certified according to the provisions of section four-a, article
3 six of this chapter.

4 (d) If any ballot card is damaged or defective so that it
5 cannot properly be counted by the automatic tabulating equipment,
6 a true duplicate copy is to be made of the damaged ballot card in
7 the presence of representatives of each political party on the
8 ballot and substituted for the damaged ballot card. All duplicate
9 ballot cards are to be clearly labeled "duplicate" and are to bear
10 a serial number which is recorded on the damaged or defective
11 ballot card and on the replacement ballot card.

12 (e) The returns printed by the automatic tabulating equipment
13 at the central counting center, to which have been added write-in
14 and other valid votes, are, when certified by the clerk of the
15 county commission, to constitute the official preliminary returns
16 of each precinct or election district. Further, all the returns
17 are to be printed on a precinct basis. Periodically throughout and
18 upon completion of the count, the returns are to be open to the
19 public by posting the returns as have been tabulated precinct by
20 precinct at the central counting center. Upon completion of the
21 canvass, the returns are to be posted in the same manner.

22 (f) If for any reason it becomes impracticable to count all or
23 a part of the ballots with tabulating equipment, the county
24 commission may direct that they be counted manually, following as
25 far as practicable the provisions governing the counting of paper
26 ballots.

1 (g) As soon as possible after the completion of the count, the
2 clerk of the county commission shall have the vote recording
3 devices properly boxed or securely covered and removed to a proper
4 and secure place of storage.